

CNR NO- MHSO060014542021



R.C.S.No.91/2021

Vasant Bhimrao Ghule

Vs

State Of Maharashtra & Ors.

ORDER BELOW EXH.87
(Delivered on 04/05/2023)

01] Present application is filed by defendant No.9 and 10 under Order VII Rule 11 of the Code of Civil Procedure thereby requesting to reject the plaint.

02] It is contended that, the suit is filed without any cause of action, plaintiff has given the incorrect description of the suit property, the relief of injunction sought by the plaintiff is absolutely not maintainable against the Government i.e. defendant No.1 to 5. The suit is barred by section 41 (ha) and 20(A) of the Specific Relief Act. This court is not having jurisdiction to try and entertain the suit. There is specific bar of granting injunction in respect of the infrastructure project. The notice issued by defendant No.1 to 5 and the action taken by them against the plaintiff is legal and plaintiff can not challenged the same before this court by way of this suit. As the description of the property is incorrect and ambiguous the suit is barred as per Order VII Rule 3 of the Code of Civil Procedure. Therefore, it is prayed that the plaint may be rejected as per Order VII Rule 11(a),(d) alongwith Order VII Rule 3 of the Code of Civil Procedure.

03] Plaintiff opposed the application thereby contending that defendant No.9 and 10 have no locus-standi to file present application as they are not concerned with the suit. The suit property is situated on the Western side of the road where as the land Gut No.716/2 owned by defendant No.6 to 8 is situated on Eastern side of the road. In the year 2018-2019, defendant No.6 to 8 made encroachment over the road. Despite of pointing this fact to defendant No.1 to 5, they illegally issued a notice to plaintiff thereby informing that the plaintiff's property is in the form of encroachment. Due to the political pressure defendant No.2 and 3 issued notice dated 09.11.2020 and 18.03.2021 to the plaintiff thereby threatening to demolish plaintiff's construction over the suit property, therefore, plaintiff is constrained to file instant suit. The suit is filed for the relief of perpetual injunction intending to protect his possession over the suit property. No relief is sought in respect of any infrastructure project or against the public policy. The correct description of the suit property is given in the plaint. The suit is well maintainable in the eyes of law. Therefore, it is prayed that the application is rejected.

04] Heard learned advocate for both the parties at length. Record & Proceeding is perused.

05] Following point arises for my determination, I have recorded my findings thereon for the reasons discussed below.

No.	Points	Findings
1	Whether the plaint deserves to be rejected, as prayed ?	No.
2	What order ?	Application is rejected.

Reasons

As to point No.1:-

06] It is no more *res integra* that to decide an application under order VII Rule 11 of the CPC the contents of the plaint are required to be considered only and the written statement can not be looked into. The provision of Order VII Rule 11 of the CPC reads as under:-

The plaint shall be rejected in the following cases :-

- a) where it does not disclose a cause of action;
- b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- d) where the suit appears from the statement in the plaint to be barred by any law;
- e) where it is not filed in duplicate;
- f) where the plaintiff fails to comply with the provisions of rule 9;

07] Present applicant i.e. defendant No.9 and 10 were not arrayed initially as defendants in the suit. Recently, as per

the application filed by them under Order I Rule 10 of the CPC vide Exh.23, they are came to be added as defendants in the suit. After filing their written statement, present application is came to be moved by them.

08] The suit is filed for the relief of perpetual injunction against the State Government i.e. defendant No.1 to 5. Defendant No.6 to 8 are adjoining land holders. Land Gut No.1/1/b/1 admeasuring 45 R. situated at village Patvardhankuroli, Tal. Pandharpur, Dist. Solapur wherein the house bearing Grampanchayat No.968 is also situated towards the Eastern side of the suit property. There is road running from Patvardhankuroli to Pehe. Plaintiff's case is that he is having his agricultural land and house situated therein since long. His house is situated at 10 feet distance from the road. In the year 2019, the permission is granted for the development of the construction of the road under Pradhan Mantri Gram Sadak Yojana. It is contended that when the development/construction of the road started, defendant No.6 to 8 destroyed the road with the help of J.C.B and included in it their land Gut No.716/2. Due to this encroachment the width of road is reduced. When plaintiff pointed out this fact to defendant No.1 to 5, without taking any action against defendant No.6 to 8, issue illegal notice to plaintiff thereby stating that plaintiff's construction is illegal and in the form of encroachment. Due to the political influence of defendant No.6 to 8 and other villagers, defendant No.2 and 3

issued illegal notice dated 09/11/2020 and 18/03/2021 thereby informing that plaintiff's construction will be demolish. As the act of the defendants is illegal and out come of the political pressure, plaintiff filed the suit thereby seeking following reliefs :-

तरी मे. कोर्टास वादी यांची विनंती की,

अ) वादी यांचा दावा हा खर्चासह मंजूर करणेत यावा.

ब) दाव्यात दिलेल्या कारणास्तव, प्रतिवादी क्र.१ ते ५ यांनी स्वतः अगर इतरांमार्फत वादी यांचे दावा कलम १ मधील नमुद जागेतील विटा व पत्र्यांचे बांधकाम बेकायदेशीररित्या पाडू नये तसेच दावा मिळकतीमधील वादीचे शांततामय कब्जे वहिवाटीस प्रतिवादींनी हरकत अडथळा करू नये अशी निरंतरची ताकीद प्रतिवादी विरुद्ध देणेत यावी.

क) या दाव्याचा वकील फीसह संपूर्ण खर्च वादीला प्रतिवादीकडून देण्यात यावा.

ड) आवश्यकतेनुसार या दाव्यातील मजकुर कमी करण्यास, उपलब्ध मजकुर दुरुस्त करण्यास अगर ज्यादा मजकुर समाविष्ट करण्यास वादींना परवानगी असावी.

ड) इतर योग्य ते न्यायाचे हुकूम व्हावेत.

09] Present applicant's contention is that, for want of proper identification of the subject matter the plaint deserves to be rejected. At the same time according to them, for want of cause of action and the suit is being barred by law the plaint deserves to be rejected. By relying upon Section 41(ha) and Section 20(A) of the Specific Relief Act, 1963 it is argued that the plaint be rejected.

10] It is pertinent to note here that, nowhere in the plaint plaintiff is contending that there exists any contract between him and defendant No.1 to 5 in respect of any infrastructure project. Plaintiff is neither seeking specific performance of any contract against defendants nor seeking any relief on the basis of any contract. Merely, the construction/development of the road is going on from the Eastern side of the suit property and on the basis of notice it is informed to the plaintiff that his house is situated on the road in the form of encroachment and defendant No.1 to 5 are going to demolish it, hence, plaintiff has filed the suit with a contention that there is absolutely no encroachment on his part but defendant No. 6 to 8 have encroached upon the road and due to the political pressure defendant No.1 to 5 are trying to shift the road in the suit property thereby showing his construction as an encroachment. In such circumstances, I am of the opinion that Section 20(A) of the Specific Relief Act could not come into picture. When Section 20(A) is not applicable, no question arises of trial of the suit by the Special Court as contemplated under Section 20(B) of the Specific Relief Act.

11] Defendant No. 9 and 10 relied upon section 41(ha) which provides that, as to when the injunction can not be granted by the court. The newly inserted Section 41(ha) provides that an injunction can not be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related

thereto or services being the subject matter of such project. This provision controls the discretionary power of the court to grant the relief of injunction. But, on the basis of it, it can not be hold that if such injunction is sought in the plaint then the plaint would be barred by law as contemplated under Order 7 Rule 11(d) of the CPC.

12] Applicants are contending that there is no cause of action to file the suit. But on the perusal of the documents annexed alongwith the plaint it goes to show that notice is came to be issued by defendants to the plaintiff thereby informing that his house is situated on road in the form of encroachment, he shall remove it on his own, in default the same will be demolish. There is reference of the Hungers strike by some villagers before the office of Sub-Divisional Engineer P.W.D. Department, Pandharpur. It is worth to mention here that, when defendant No.9 and 10 sought permission to add them as defendants in the suit, it is their case that they are fighting battle for this road and they were on hunger strike for it. In such circumstances, there is some smell of political rivalry at the village level. It is no more res-integra that, the cause of action is always a bundle of facts which is required to be gathered from the total averments in the plaint. On perusal of the entire plaint, the clause of cause of action and the documents relied upon by the plaintiff, there exists no ground to hold that the suit is filed without any cause of action.

13] Applicants are also contending that the exact description of the suit property is not given in the plaint as contemplated under Order VII Rule 3 of the CPC. It is necessary to mention here that, plaintiff is not claiming any relief of removal of encroachment and possession from defendant nos. 6 to 8. Plaintiff is just contending that he is in lawful and settled possession over the suit property therefore sought relief of injunction against defendants thereby restraining them from obstructing his possession. In the plaint para No.1 plaintiff has given the description of the suit property i.e. it's Gut number, area, Grampanchayat number of his house, it's description and area. Plaintiff has also given the four boundaries of his entire suit property wherein his house is situated. The four boundaries of the suit property are not disputed by the defendants. Towards the Eastern side there is road running Patvardhankuroli to Pehe and the real dispute pertains to this side. Admittedly, plaintiff contended that defendant No.6 to 8 have made encroachment over the road but that does not means that plaintiff shall provide the description of defendant's property. In all, the plaint contents the relevant description from which the subject matter can be duly be identified.

14] In such circumstances, I am of the opinion that there is no express or implied bar in the form of any statement in the plaint so as to reject the same as per Order VII Rule 11(d) of the CPC. The suit is filed for the cause of action as mentioned in the

plaint hence the plaint can not be rejected. Section 20(A) and 20(B) of the Specific Relief Act are not attracted in the suit considering the pleadings in the plaint. The question of granting injunction under section 41(ha) is out of purview of Order VII Rule 11 of the CPC and it can be decided only after the fact finding inquiry in the suit. Plaintiff has duly complied the provision section under Order VII Rule 3 of the CPC in respect of the description of the subject matter. Considering all these aspects, I am of the opinion that the plaint can not be rejected, as sought for. Hence, I answer point no.1 in the Negative.

As to point No.2:-

15] Considering all these aspects, I am of the opinion that the application being devoid of any merits is liable to be rejected, therefore, I proceed to pass the following order:-

ORDER

- 1] Application is rejected.
- 2] Cost in cause.

Dt. 04/05/2023

(A. A. Khandale)
2nd Jt. Civil Judge Senior Division.,
Pandharpur

CERTIFICATE

I, affirm that the contents of this PDF file Order/Judgment are same word to word, as per the original order/Judgment.

Name of Employee	:	Shirsikar V. G., Stenographer
Court	:	2 nd Jt. C.J.S.D. Pandharpur
Date	:	04.05.2023
Judgment/order signed by	:	
the Presiding Officer on	:	04.05.2023
Judgment/Order uploaded	:	
on	:	04.05.2023
